

Applicant: Brown

Serial No.: 10/016,310

Response to Office Action

**RESPONSE TO OFFICE ACTION****IN THE INFORMATION DISCLOSURE STATEMENT:**

The Information Disclosure Statement submitted on 11/02/2001 contains a clerical error. Reference Melcher (5,766,791) was listed inadvertently and is not relevant to this application. Applicant apologizes for this error.

**IN THE CLAIMS:**

Applicant acknowledges that Claims 1-9 have been withdrawn from further consideration.

**Response to Examiner's Objections:**

Examiner has objected to Claim 10 because he believes that the term "counter" was not previously referenced. Applicant respectfully submits that the term "counter" is found in referenced in paragraph [0043] in the discussion of "electronic counter 40" with a "...numerical value of the counter 40". Additional antecedent reference is shown in Fig. 2 which illustrates "counter circuit 40". Applicant requests that Examiner remove the objection to Claim 10.

**Response to Examiner's 35 U.S.C 102 (e) Rejections:**

Examiner has rejected Claims 10-14, and 16 under 35 U.S.C 102 (e) as being anticipated by Tacklind et al. (5,704,366). Applicant traverses this rejection because Tacklind fails to teach important aspects of Applicant's invention. For example, Tacklind teaches that knowledge of the data collected by the monitoring device is sufficient to improve a patient's compliance with a medical program (see Tacklind Col. 10 Line 67 – Col. 11 Line 4). Applicant's invention is different in that Applicant uses a personalized video message from the medical professional to the patient to persuade the patient to

Applicant: Brown

Serial No.: 10/016,310

Response to Office Action

improve compliance as well as take other affirmative actions such as purchasing medication refills, nutritional groceries, or other items. One differentiating factor is that Tacklind assumes that knowledge of clinical data will cause a patient to take an affirmative action, such as improving compliance with a medical protocol. Applicant believes that a patient already knows whether or not he is compliant with a protocol. For example, Tacklind would remind a patient that he was short of breath; this is information that the patient already knows. Patients also already know that if they are short of breath they should take their medication. So Tacklind provides the patient with no new information that would be likely to alter the patient's behavior or persuade the patient to take affirmative actions such as taking a medication or purchasing a medication refill. For various reasons, such as unpleasant side effects or dementia or forgetfulness, patients may intentionally or unintentionally not comply with a medical protocol. Persuasion is required to maintain compliant behavior. Tacklind fails to even attempt to persuade a patient on a personalized basis to take any affirmative action. Tacklind teaches away from Applicant's invention because Tacklind teaches that the numerical data is sufficient to achieve affirmative actions. Support in Applicant's application for this differentiating aspect of the invention is found in Paragraphs [0065], [0066], [0067], [0090] and [0091] of the published application. Applicant respectfully submits that the amended independent claim 10 and the new claims 17 - 22 are allowable over Tacklind '366 because Applicant teaches how the patient may be persuaded to take affirmative actions even when the patient already knows that such actions are necessary to maintain or restore good health.

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Serial No.: 10/016,310

Response to Office Action

Applicant further submits that in light of the amendment to independent claim 10, the dependent claims 11-14 and 16 are thereby allowable, too. Applicant respectfully requests that Examiner remove the 35 U.S.C 102(e) rejection of Claims 10-14, and 16 and allow these claims to issue. Applicant also requests that Examiner allow the new claims 17 - 22 to issue.

**Response to Examiner's 35 U.S.C 103 (a) Rejections:**

Examiner has rejected Claim 15 under 35 U.S.C 103 (a) as being anticipated by Tacklind et al. (5,704,366) in view of Evers et al. (5,558,638). Independent Claim 10 from which Claim 15 depends has been amended to further define Applicant's invention to persuade a patient to take affirmative action rather than simply provide numerical data. Applicant respectfully submits that neither Tacklind nor Evers teach the method of persuasion as claimed in amended independent Claim 10 and dependent 15 of Applicant's application. Therefore Applicant respectfully requests that Examiner remove the 35 U.S.C 103 (a) rejection of dependent Claim 15 and allow the claim to issue.

**Conclusion:**

For at least the above reasons, Applicant requests favorable reconsideration of the pending claims and favorable consideration of the newly amended claims. Applicant also respectfully requests prompt allowance of these claims.